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3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**
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6 TYRONE NOEL NUNN,

7 Plaintiff,

8 v.

9 ELY STATE PRISON, *et al.*,

10 Defendants.
11

Case No. 2:24-cv-01797-RFB-EJY

ORDER

12 Plaintiff Tyrone Noel Nunn brings this civil-rights action under 42 U.S.C. § 1983 to redress
13 constitutional violations that he claims he suffered at Ely State Prison. ECF No. 1-1. On October
14 18, 2024, this Court ordered Nunn to file a fully complete application to proceed *in forma pauperis*
15 or pay the full \$405 filing fee on or before November 22, 2024. ECF No. 3. The Court warned
16 Nunn that the action could be dismissed if he failed to file a fully complete application to proceed
17 *in forma pauperis* with all three documents or pay the full \$405 filing fee for a civil action by that
18 deadline.

19 That same day, Nunn filed a document with fourteen case numbers and the words *in forma*
20 *pauperis* on it. ECF No. 4. In light of this filing, the Court extended the deadline for Nunn to file
21 a complete application to proceed *in forma pauperis* or pay the filing fee to March 7, 2025. ECF
22 No. 5. That extended deadline expired, and Nunn did not file a fully complete application to
23 proceed *in forma pauperis*, pay the full \$405 filing fee, or otherwise respond.

24 **I. DISCUSSION**

25 District courts have the inherent power to control their dockets and “[i]n the exercise of
26 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.
27 Thompson v. Hous. Auth. of City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986). A court may
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1 dismiss an action based on a party's failure to obey a court order or comply with local rules. See
2 Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply
3 with local rule requiring *pro se* plaintiffs to keep court apprised of address); Malone v. U.S. Postal
4 Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In
5 determining whether to dismiss an action on one of these grounds, the Court must consider: (1)
6 the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its
7 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
8 cases on their merits; and (5) the availability of less drastic alternatives. See In re
9 Phenylpropanolamine Prod. Liab. Litig., 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting Malone v.
10 U.S. Postal Serv., 833 F.2d 128, 130 (9th Cir. 1987)).

11 The first two factors, the public's interest in expeditiously resolving this litigation and the
12 Court's interest in managing its docket, weigh in favor of dismissal of Nunn's claims. The third
13 factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption of
14 injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court
15 or prosecuting an action. See Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth
16 factor—the public policy favoring disposition of cases on their merits—is greatly outweighed by
17 the factors favoring dismissal.

18 The fifth factor requires the Court to consider whether less drastic alternatives can be used
19 to correct the party's failure that brought about the Court's need to consider dismissal. See Yourish
20 v. Cal. Amplifier, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic
21 alternatives *before* the party has disobeyed a court order does not satisfy this factor); accord
22 Pagtalunan v. Galaza, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive
23 force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives
24 prior to disobedience of the court's order as satisfying this element[,]” *i.e.*, like the “initial granting
25 of leave to amend coupled with the warning of dismissal for failure to comply[,]” have been
26 “eroded” by Yourish). Courts “need not exhaust every sanction short of dismissal before finally
27 dismissing a case, but must explore possible and meaningful alternatives.” Henderson v. Duncan,

1 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and
2 unless Nunn either files a fully complete application to proceed *in forma pauperis* or pays the \$405
3 filing fee for a civil action, the only alternative is to enter a second order setting another deadline.
4 But the reality of repeating an ignored order is that it often only delays the inevitable and squanders
5 the Court's finite resources. The circumstances here do not indicate that this case will be an
6 exception: there is no hint that Nunn needs additional time or evidence that he did not receive the
7 Court's order. Setting another deadline is not a meaningful alternative given these circumstances.
8 So the fifth factor favors dismissal.

9 II. CONCLUSION

10 Having thoroughly considered these dismissal factors, the Court finds that they weigh in
11 favor of dismissal.

12 **THEREFORE, IT IS HEREBY ORDERED** that this action is **DISMISSED** without
13 prejudice based on Nunn's failure to file a fully complete application to proceed *in forma pauperis*
14 or pay the full \$405 filing fee in compliance with this Court's October 18, 2024, and February 4,
15 2025, Orders. The Clerk of Court is directed to enter judgment accordingly and close this case.

16 **IT IS FURTHER ORDERED** that Nunn may move to reopen this case and vacate the
17 judgment by filing a motion for reconsideration of this Order. In this motion, Nunn is required to
18 explain what circumstances delayed him from paying the filing fee or filing the application to
19 proceed *in forma pauperis* and a complaint in compliance with LSR 2-1. If the Court finds there
20 to be good cause or a reasonable explanation therein, the Court will reopen the case and vacate the
21 judgment.

22 **DATED:** April 7, 2025.

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25 **RICHARD F. BOULWARE, II**
26 **UNITED STATES DISTRICT JUDGE**
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